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COMMITTEE ON THE RIGHTS OF THE CHILD

First session

SUMMARY RECORD OF THE 20th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 14 October 1991, at 3 p.m.

Chairman: Mrs. BADRAN

CONTENTS

Adoption of the rules of procedure (continued)

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The meeting was called to order at 3.25 p.m.

ADOPTION OF THE RULES OF PROCEDURE (agenda item 4) (CRC/C/L.1) (continued)

Rule 75 (General discussion)

1. After an exchange of views with Mr. KOLOSOV, the CHAIRMAN proposed the following wording for the text of rule 75: "In order to enhance a deeper understanding of the content and implications of the Convention, the Committee may devote one or more meetings of its regular sessions to a general discussion on one specific article of the Convention or related subject".

2. It was so decided.

3. Rule 75, as amended, was adopted.

Rule 76 (Studies)

4. After an exchange of views on the word "sources" and the style of the second paragraph of the draft text in English, in which Mr. HAMMARBERG, Mr. KOLOSOV, Mrs. SANTOS PAIS, the CHAIRMAN, Mrs. KLEIN-BIDMON (Representative of the Secretary-General), Mrs. EUFEMIO and Miss MASON took part, the CHAIRMAN suggested that the text of the paragraph should be amended to read: "The Committee may also invite the submission of studies from other bodies on topics of relevance to the Committee".

5. It was so decided.

6. Rule 76, as amended, was adopted.

Rule 77 (Headings)

7. Rule 77 was adopted without amendment.

Rule 78 (Amendments)

8. Rule 78 was adopted without amendment.

9. The CHAIRMAN invited the members of the Committee to resume consideration of rules 34 and 37, on which a decision had not yet been taken.

Rule 34 (Observers)

10. Miss MASON pointed out that the word "observers" always gave rise to confusion. She therefore wondered whether a definition of the term should not be included in the rules of procedure or whether it should be left to the successive members of the Committee to interpret it as they wished. She herself would be prepared to accept the definition that had been given by Mr. Kolosov.

11. Mr. KOLOSOV drew attention to the difference in rights and obligations of observers inherent in the words "to be represented as observers" and the words "may attend as observers".

12. Mrs. SANTOS PAIS said that the text of the rule was not in conformity with article 45 (a) of the Convention, in which the term "observers" did not appear. In her view, the difference pointed out by Mr. Kolosov arose mainly because of the words used in English, namely, "shall be entitled" in the first case and "may attend" in the second. In article 45 (a), the Convention provided for various modes of participation by specialized agencies and United Nations organs and bodies in the work of the Committee. In view of the difficulty in arriving at a common definition of the term "observers", it might be better to choose the second solution suggested by Miss Mason, namely, to leave it to the Committee to interpret the term as it saw fit and to delete even the words "as observers" in the text of rule 34 in order to bring it into line with the text of the Convention.

13. Miss MASON said she did not quite agree with Mr. Kolosov's interpretation. An observer was an observer, whether he participated in the work of the Committee as of right or because he had been invited to do so. Everything would therefore depend on how the Committee defined the term "observers".

14. Mr. HAMMARBERG asked what the official definition of an observer was in the context of the United Nations.

15. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said that she did not know the precise definition of the term, which was applicable to all organs and bodies of the United Nations, and that she would consult the Legal Liaison Office on the matter.

16. Mr. KOLOSOV said he did not believe that there was an established definition, but the rights of observers were set forth in one of the rules of procedure of the General Assembly, which was implicitly applicable to all United Nations bodies.

17. Mrs. BELEMBAOGO said she thought that the problem arose because the term "as observers" seemed to assign specialized agencies and other United Nations bodies a different role from the one the Committee expected of them. The simplest solution would therefore be to delete the term, as had been suggested by Mrs. Santos Pais.

18. The CHAIRMAN recalled that, during the consideration of rule 68, the Committee had decided that only members of the Committee could ask questions of the representatives of States parties during the consideration of their reports. That gave an idea of what observers could and could not do.

19. Mr. KOLOSOV said that he supported the proposal that the words "as observers" should be deleted in order to bring rule 34 more closely into line with the text of the Convention. The question, however, was not merely whether observers would have the right to speak, but whether they could also submit proposals directly to the Committee without one of its members serving as intermediary. Rule 34, as currently worded, provided that specialized agencies, UNICEF and other United Nations bodies which were entitled to be represented in the Committee could participate in its debates in the sense that they themselves could ask questions, except perhaps of the

representatives of States parties, make observations and submit information documents. Those who did not enjoy that right could simply attend meetings of the Committee, and that meant that they could not speak and were limited to a passive role. That was the meaning of the word "attendance" in English. Moreover, it was also the only way in which representatives of specialized agencies, UNICEF and other United Nations bodies could participate in closed meetings, provided, in addition, that they had been expressly invited to do so by the Committee, as the latter part of paragraph 1 stated. The other competent bodies concerned, which were referred to in paragraph 2 of rule 34, could attend only if they were invited to do so and their participation was limited to attendance at meetings. The wording of the article would necessarily have to be amended for it to be interpreted in any other manner.

20. Mr. HAMMARBERG pointed out that rules 35 and 36, which had already been adopted by the Committee, referred to "participants" and he wondered what was the exact meaning that should be given to the term. He assumed that it covered all persons invited to take part in deliberations of the Committee, such as specialized agencies, UNICEF, other bodies and, naturally, secretariat staff, but there might also be other interpretations.

21. With regard to rule 34, he also supported the proposal by Mrs. Santos Pais for the deletion of the term "observers". Even so, the current wording of the rule could give rise to a very restrictive interpretation, particularly the word "attend" in English, as Mr. Kolosov had quite rightly pointed out. The organs and bodies invited by the Committee to its closed meetings should have the possibility of participating actively, since the Convention itself provided that they could be invited to give expert advice. The choice would therefore be between redrafting the text or reconsidering it in greater detail in the days ahead, since no solution seemed to be possible for the time being.

22. Mrs. SANTOS PAIS said that it might be useful to refer in rule 34 to rule 70, which had already been adopted by the Committee. Rule 70 concerned the possibility for the specialized agencies and other organs and bodies of the United Nations to submit reports or give the Committee expert advice, and that represented the content of their participation, whereas rule 34 dealt only with their presence. By referring to rule 70, the impression would not be given that those organs and bodies took part only passively in the Committee's work without any real participation.

23. Mr. O'DONNELL (Defence for Children International Movement) said that he wished to know whether the proposal to delete the word "observers" in rule 34 also applied to the second paragraph. If that was the case, it would mean that non-governmental organizations would have no further right than to be present in the room. It would therefore be useful for such organizations to know more about the possibilities they would have of effectively participating in the Committee's work. Moreover, in most cases, only non-governmental organizations in consultative status with the Economic and Social Council had the right to speak in a given body; it would therefore be useful for the Committee to indicate what its policy would be on the matter before its following session. The non-governmental organizations would also like to know if it would be possible for them to have access to the documentation of the

Committee and to submit information documents to the Committee prior to each session; they hoped that the Committee could provide clarifications on the question before the end of the session.

24. The meeting was suspended at 4.30 p.m. and resumed at 5 p.m.

25. Mr. KOLOSOV said that he was prepared to accept the provisions of rule 34 as currently drafted, provided that it was understood and reflected in the summary record of the meeting that the right to be represented during the consideration of the implementation of the provisions of the Convention included the right to speak and to submit proposals to the Committee, while an invitation to participate, as an observer, in the meetings of the Committee or of its subsidiary bodies conferred only the right to speak and not the right to submit proposals to the Committee. It might be that the Committee would consider it inappropriate for bodies with the right to be represented in its meetings to submit proposals or for the representatives of such bodies and of other competent organs admitted to participate to take the floor: in such cases, the Committee would have the capacity to raise the public meeting and to hold a private meeting immediately afterwards. In his view, such an interpretation would not be contrary to the spirit of the Convention.

26. Mrs. SANTOS PAIS said she agreed that it was important to follow the relevant provisions of the Convention as closely as possible. In article 45, the Convention simply mentioned the grounds on which an invitation might be made to the representatives of competent bodies, without specifying the modalities by which such representatives would give their views or introducing the idea of observer. The text of rule 34 should therefore be amended in the following manner. The title should read: "Participation in meetings" and the term "as observers" should be deleted in the two sentences of paragraph 1 and in paragraph 2. In addition, reference should be made to the former rule 69, which had become rule 70, at the beginning of the second sentence of paragraph 1 and at the beginning of paragraph 2, which would begin with the words: "Pursuant to rule 70 of the present rules of procedure", and, in the English version, the words "may attend" should be replaced by the words "may participate in". Lastly, it might be useful to make the second sentence of paragraph 1 a new paragraph 2 in order better to separate the ideas of representation and participation.

27. Mr. HAMMARBERG said that it might be useful in that way to establish a parallel between the provisions of rule 34 of the rules of procedure, which referred to the possibility of participation by competent organs and bodies, and the provisions of rule 70, which gave the grounds for their participation. Such a solution would reflect the entire tenor of article 45 of the Convention and would also draw a clear-cut distinction between the right of specialized agencies and United Nations bodies to participate in the Committee's meetings and the need for other competent bodies to be invited to do so by the Committee.

28. Mr. KOLOSOV said he was of the view that there was really no need to refer at that point to rule 70 of the rules of procedure: if, pursuant to that article, the Committee invited competent bodies to provide expert advice or submit reports, it was ipso facto recognizing their right to participate. Moreover, it did not seem advisable to replace the words "may attend" by the

words "may participate in": the idea of participation was extremely broad and covered the fact of attending meetings of the Committee, taking the floor during its debates and even taking part in decisions. If the Committee wished nevertheless to retain the latter amendment, it would then have to be specified in rule 34 that the participation of the bodies concerned was without prejudice to the provisions of rule 52 of the rules of procedure, in order clearly to establish the difference between mere participants and members of the Committee, who alone had the right to take decisions.

29. Mrs. SANTOS PAIS said that she had suggested the words "may participate in" with the sole aim of bringing rule 34 into line with other provisions of the rules of procedure, in which the terms "participation", "participants" and "to participate" had been used. However, there was no doubt that the right to take part in decisions should remain the exclusive prerogative of the members of the Committee. If it was understood that the participants should nevertheless take part in the debate during the consideration of the reports submitted by States parties, she would not object if reference was made to rule 52 of the rules of procedure, as suggested by Mr. Kolosov, even though it seemed more advisable to refer to the whole of chapter XI, concerning voting, and not only to the provisions concerning the adoption of decisions.

30. Mr. KOLOSOV said he could not see any difference between the fact of being represented and the fact of participating in the meetings of the Committee, since, according to the reasoning of Mrs. Santos Pais, all participants would have the right to speak during the debates.

31. Mrs. SANTOS PAIS explained that her proposal was to highlight the three levels of participation in the Committee's work. At the first level, specialized agencies and United Nations bodies would have the right to be represented at the meetings of the Committee and therefore the right to take the floor during meetings, whether the Committee thought that appropriate or not. That was the meaning of the first sentence of paragraph 1. At a second level, the Committee would reserve the right, for the purposes mentioned in rule 70 of the rules of procedure, to invite or not to invite such agencies and bodies to take part in its debates in private meetings - and it should invite them wherever possible - as well as the representatives of other competent bodies concerned, whether in public or private meetings. That was the implication of the second sentence of paragraph 1 and of paragraph 2. Lastly, there was implicitly a third level of participation, consisting of the public, which came merely to listen to the public debates.

32. Mr. HAMMARBERG said that he agreed with the distinction Mrs. Santos Pais had made between representation, which automatically included the right to speak, and participation at the Committee's invitation. Many of the rules of procedure, such as rule 38 relating to the quorum, would be meaningless if the intention was not that the members of the Committee alone should be entitled to vote.

33. Mr. KOLOSOV said that such a distinction became absurd in the context of rules 41 and 42 of the rules of procedure, which made it clear that only "a member or representative" could take the floor. It could therefore not be concluded that the fact of being invited to take part in the Committee's meetings automatically involved the right to speak.

34. The CHAIRMAN suggested that the Committee should first take a decision on the question whether the two categories of representatives, those of United Nations bodies and those of other competent bodies concerned, were entitled to take part in the Committee's discussions and then review all the provisions of the rules of procedure in order to amend them, if necessary, in the light of the decision taken on that question.

35. Mrs. SANTOS PAIS said that, during the consideration of a report submitted by a State party with the representatives of that State, the Committee should perhaps not give the floor to the representatives of United Nations and other competent bodies. However, when the Committee reached the stage of formulating general comments on various articles of the Convention or planned to call for the preparation of studies on specific matters relating to the rights of the child, it might find it useful to have the views of the representatives of United Nations and other bodies, who would then have to be invited to speak. That was what was stated in rule 34 of the rules of procedure.

36. Mr. KOLOSOV, referring to the original text of rule 34, proposed that the words "as observers" should be deleted in the three cases and that, in the second sentence of paragraph 1 and in paragraph 2, the words "may attend" should be replaced by the words "may attend and/or intervene in". That solution would offer the advantage of giving the Committee more latitude because, if it wanted to invite the representatives of competent bodies to speak in the meetings to which they had been invited, it would then be able to take a decision on a case-by-case basis and, if necessary, in the light of the opinion of the representatives of the State party taking part in the consideration of the report of that State.

37. The CHAIRMAN said she thought that the words "may attend" might cover those two situations.

38. Mr. KOLOSOV said that the amendment he was proposing meant that the Committee would take two separate decisions, one on the fact of inviting the representatives of the bodies in question to attend meetings and the other on the fact of inviting them to speak.

39. Mr. HAMMARBERG said that there would be no point in inviting the representatives of competent bodies to attend the Committee's meetings if they were not given an opportunity to intervene in the debates. His own view was that the Committee should abide by the distinction made in the Convention between the right of United Nations bodies to be represented at the consideration of the implementation of the provisions of the Convention falling within the scope of their mandate and the Committee's right to invite those bodies and other competent bodies to provide expert advice. The solution proposed by Mrs. Santos Pais best met that concern.

40. The CHAIRMAN, referring to the amendments proposed by Mrs. Santos Pais, said she took it that the members of the Committee agreed to delete the words "as observers". Did they intend to retain the words "may attend" in the English text or did they want to adopt the words "may participate in"?

41. Mr. KOLOSOV said that, if the Committee accepted the version proposed by Mrs. Santos Pais, rules 41 and 42 would have to be amended by adding the words "or participant" after the words "a representative".

42. Mr. BRUNI (Secretariat) explained that rules 41 and 42 related to the time limitation and to the list of speakers, respectively, and did not characterize the status of speakers. The reference in those rules to a "member" or a "representative" could be replaced by the word "speaker".

43. Mr. KOLOSOV thanked Mr. Bruni for his explanations, but pointed out that the question of the status of participants had still not been settled and that they needed to know whether or not they would be able to make statements in the Committee's meetings.

44. Mr. HAMMARBERG said that, apart from the members of the Committee, the participants in the Committee's work were divided into two categories: the members of the United Nations family, to which the Convention gave the right to be represented, and persons invited to give expert advice on a particular point. Those persons, who would necessarily have to make statements, thus took part in the Committee's work.

45. The CHAIRMAN said that the Committee recognized that the representatives of the members of the United Nations family and other competent bodies would be able to take part in its debates. They were, "In conformity with article 45, subparagraph (a), of the Convention, entitled to be represented" precisely so that they could make statements. That was probably how rule 34 should be understood and the idea of "participation" should then not give rise to any problems. The word "attend" would also imply the possibility of being able to speak.

46. Mrs. SANTOS PAIS said it was obvious that, if the Committee invited a person to one of its meetings, it was in order to hear his views. If it was understood that the word "attend" did not rule out the possibility of taking part in the discussion, she would not insist that it should be replaced by the word "participate".

47. Mr. KOLOSOV drew the attention of the Committee to the words "when invited by the Committee to do so", which were used in paragraph 1 and in paragraph 2 of article 34 and which clearly showed that only certain persons present in the room were, unlike the public, entitled to take the floor.

48. The CHAIRMAN said she believed that the Committee was about to reach agreement. The general view was that it was the invitation which entitled a person to speak and that that was not contrary to the status of observer. The new wording of rule 34 appeared to be along those lines.

49. Mr. KOLOSOV said he also thought that there was no further disagreement in the Committee. It would be enough to amend the title of rule 34 and delete the word "observers". If any further problems arose, the Committee might refer to the summary record of the meeting, which would clearly show that participation as an observer implied the right to take the floor. In rules 41 and 42, it would be appropriate, as Mr. Bruni had suggested, to replace the words "member or representative" by the word "speaker".

50. Mr. HAMMARBERG said that the discussion had been quite useful, since it had enabled the Committee to explain what it meant by participation in its work. The proposal by Mrs. Santos Pais had the advantage of making it possible not to use the word "observer".

51. The CHAIRMAN requested Mrs. Santos Pais once again to read out the version of rule 34 that she was proposing.

52. Mrs. SANTOS PAIS read out her proposal and said that she also agreed with the amendments Mr. Bruni had proposed to rules 41 and 42.

53. Mr. KOLOSOV said that he did not understand the reason for the reference to rule 70, which seemed to rule out any possibility of an invitation not decided pursuant to rule 70. Mentioning that rule in the present context might mean that the Committee would have some nasty surprises in store for it later.

54. Mr. HAMMARBERG said that the reference to rule 70 should be taken to mean that the invitation had been made for the purpose of obtaining expert advice. If that reference gave rise to problems, however, he would not insist that it should be maintained.

55. The CHAIRMAN said she took it that the Committee was prepared to adopt the wording of rule 34, as read out by Mrs. Santos Pais, deleting the words "In conformity with rule 70 of the present rules of procedure" in paragraph 1 and paragraph 2.

56. Rule 34, as amended, was adopted.

Rule 37 (Distribution of official documents)

57. The CHAIRMAN said it had been proposed that the word "formal" in the second line of paragraph 1 should be deleted and that the end of paragraph 2 should be amended to read: "to members of its subsidiary bodies, the States parties concerned and other participants in the meeting".

58. Mr. KOLOSOV proposed that the word "representatives" should be added before the words "and other participants".

59. Mrs. SANTOS PAIS drew the attention of the Committee to the fact that the new numbering of the rules made it necessary, in paragraph 3, to replace the words "rules 65 and 68" by the words "rules 66 and 69". She also noted that, during the consideration of rules 35 and 36, it had been said that the word "participants" should be understood to mean "representatives".

60. Mr. HAMMARBERG said that, in rule 37, the word "participants" meant the members of the Committee, representatives and persons who had been invited.

61. The CHAIRMAN suggested that the Committee should come back to that question at its next meeting.

The meeting rose at 6.05 p.m.